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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/282,157	03/31/1999	SAM E. KINNEY, JR.	046700-5005	8245

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EXAMINER

BASHORE, ALAIN L

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/282,157

Applicant(s)

KINNEY, JR. ET AL.

Examiner

Alain L. Bashore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9-28-01.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65, 67-69 and 71-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-65, 67-69, 71-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-31-99 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to because in figure 2, the legend is not at the bottom of the drawing figure. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Figures 1-3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The attempt to incorporate subject matter into this application by reference to applications on pages 8, 11, and 18 are improper because the serial numbers and current status are not given.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 21, 41, 69, 72, 73, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huberman in view of Godin et al.

Huberman discloses a method, system, and computer program product on computer useable medium of conducting an electronic online auction between a plurality of potential bidders, the plurality of potential bidders competing for a lot having at least one product (col 3, lines 5-18). Participants of the online auction include a sponsor and at least two potential bidders competing for award of a lot (fig 2).

Multiple bid information is received for a lot from multiple bidders.

The received first bid information represents a first bid that is originally defined in a context of the first bidder. Information reflective of said submitted first bid is stored, the stored information enabling a relative comparison of submitted bids on a common competitive basis (col 11, lines 35-50).

Huberman does not disclose second bid information that is:

defined in a context of a second bidder that is different than said context of said first bidder to said second bidder; and

transmitted thus enabling said second bidder to view or display a bid originally defined in a context of said first bidder in said context of said second bidder.

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Godin et al discloses context differences (col 5, lines 40-67) and transmitting the differences (col 1, lines 43-50).

It would have been obvious to one with ordinary skill in the art to include what is disclosed by Godin et al to Huberman because of what is taught by Godin et al. Godin et al teaches the importance of changing dynamics inherent to the auction process such that a bid must be viewed in context (col 6, lines 46-50).

6. Claims 2, 3, 9, 11, 12, 19, 22, 23, 29, 31, 32, 39, 42, 43, 48, 52, 58, 61, 65, and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huberman in view of Godin et al in further view of Lee.

Huberman in view of Godin et al disclose what is described in the previous rejection.

Huberman in view of Godin et al does not disclose a transformed bid:

generated by means to effect the relative comparison;

with a linear transformation having at least one of a multiplicative

adjustment and an additive adjustment;

Lee discloses a transformed bid to effect relative comparison that includes an adjustment (col 2, lines 40-61).

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It would have been obvious to one with ordinary skill in the art to include what is disclosed by Lee to Huberman in view of Godin et al because of what is taught by Lee. Lee teaches that his transformation allows for confidentiality of bidders while still allowing various bids to be seen. (col 2, lines 52-54).

7. Claims 6, 16,26,36, 45, 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huberman in view of Godin et al in further view of Lee as applied to claims 2, 3, 9,,11, 12, 19, 22, 23, 29, 31, 32, 39, 42, 43, 48, 52, 58, 61, 65, and 75 above, and further in view of Gell.

Huberman in view of Godin et al in further view of Lee does not disclose performing a non-linear transformation.

Gell disclose performing a non-linear transformation (col 5, lines 55-67; col 6, lines 1-16)..

It would have been obvious to one with ordinary skill in the art to include what is disclosed by Gell to Huberman in view of Godin et al in further view of Lee because of what is taught by Gell. Gell teaches non-linear transformations are better suited for evaluation of comparing subjective or objective information (col 5, lines 57-65) in a bid.

8. Claims 7, 17, 27, 37, 46, 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huberman in view of Godin et al in further view of Lee as applied to

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claims 2, 3, 9, 11, 12, 19, 22, 23, 29, 31, 32, 39, 42, 43, 48, 52, 58, 61, 65, and 75 above, and further in view of Dworkin.

Huberman in view of Godin et al in further view of Lee does not disclose transforming received bid information using a lookup table.

Dworkin discloses transforming received information using a process that inherently utilizes a lookup table (col 2, lines 6-18).

It would have been obvious to one with ordinary skill in the art to include a look-up table to Huberman in view of Godin et al in further view of Lee because of what is taught by Dworkin. Dworkin teaches varied products that may be purchased vary from manufacturer to manufacturer. (col 1, lines 12-60).

9. Claims 8, 18, 28, 38, 47, 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huberman in view of Godin et al in further view of Lee as applied to claims 2, 3, 9, 11, 12, 19, 22, 23, 29, 31, 32, 39, 42, 43, 48, 52, 58, 61, 65, and 75 above, and further in view of Gell and Dworkin.

Huberman in view of Godin et al in further view of Lee does not disclose performing a combination of linear, non-linear, and lookup table transformations simultaneously.

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It would have been obvious to one with ordinary skill in the art to include simultaneous transformations to Huberman in view of Godin et al in further view of Lee for the purposes of additive effect and efficiency.

10. Claims 4, 10, 13, 14, 20, 24, 30, 33, 34, 40, 44, 49, 53, 54, 59, 63, 67, 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huberman in view of Godin et al in further view of Lee as applied to claims 2, 3, 9, 11, 12, 19, 22, 23, 29, 31, 32, 39, 42, 43, 48, 52, 58, 61, 65, and 75 above, and further in view of Popolo.

Huberman in view of Godin et al in further view of Lee does not disclose multiplying a received bid price, specified in a local currency of said first bidder, with a pre-defined exchange rate to yield a base currency bid price.

Popolo discloses a received bid price, specified in a local currency of said first bidder which is converted to yield a base currency bid price (col 4, lines 20-45).

It would have been obvious to one with ordinary skill in the art to include what is disclosed by Popolo to Huberman in view of Godin et al in further view of Lee because of what is taught by Popolo. Popolo teaches that such is user friendly in bidding. (col 4, lines 37).

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11. Claims 5, 15, 25, 35, 50, 60, 64, 68 are rejected under 35 U.S.C. 103(a) as unpatentable over Huberman in view of Godin et al in further view of Lee as applied to claims 2, 3, 9, 11, 12, 19, 22, 23, 29, 31, 32, 39, 42, 43, 48, 52, 58, 61, 65, and 75 above, and further in view of (Walsh and Walker et al (207)).

Huberman in view of Godin et al in further view of Lee does not transforming a received price per physical measure of weight or volume of coal into a standardized unit of value to the buyer of coal using multiplicative adjustments and additive adjustments based upon one or more of the thermal content, percentage sulfur, percentage ash, percentage water, and hardness of coal of said first bidder.

Walsh discloses coal and its intrinsic value for low ash and sulphur content (col 1, lines 1-49).

It would have been obvious to one with ordinary skill in the art to include transforming a standardized unit of value to the buyer of coal based upon percentage sulfur of Walsh to Huberman in view of Godin et al in further view of Lee because of what is taught by both Walsh and Walker et al (207). Walker et al (207) teaches coal as a commodity which can be auctioned (col 2, line 54) and Walsh teaches a basis to evaluate intrinsic value of coal.

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12. Claim 62 is rejected under 35 U.S.C. 103(a) as unpatentable over Huberman in view of Godin et al in further view of Lee as applied to claims 2, 3, 9, 11, 12, 19, 22, 23, 29, 31, 32, 39, 42, 43, 48, 52, 58, 61, 65, and 75 above, and further in view of Schirripa.

Huberman in view of Godin et al in further view of Lee does not disclose generating a net present value bid value using a predefined discount rate structure and received multi-segment bidding parameters.

Schirripa discloses generating present value using a predefined discount rate structure (col 1, lines 1-65; col 2, lines 1-67).

It would have been obvious to one with ordinary skill in the art to include generating a net present value bid value using a predefined discount rate structure and received multi-segment bidding parameters to Huberman in view of Godin et al in further view of Lee because of what is taught by Schirripa. Schirripa teaches that a contract must be valued in present terms to be properly evaluated (col 2, lines 20-23).

Double Patenting

13. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

14. Claims 1-65, 67-69 and 71-75 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-65, 67-69 and 71-75 of copending Application No. 09/282,156. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

15. Applicant's arguments with respect to claim of record have been considered but are moot in view of the new ground(s) of rejection.

With regards to the double patenting rejection of record, applicant's arguments with regards to claim recitations are not commensurate in scope with what is claimed in 09/282,156. Current claims pending in 09/282,156 do not include net present value bids as argued by applicant.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 703-308-1884. The examiner can normally be reached on about 7:30 am to 5:00 pm (Alternate Fridays Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-1113.


Alain L. Bashore
May 23, 2002


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